

EXHIBIT 16

JUDGMENT

ENTERED ON

DEC 04 1997

BY DEPUTY *M*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 96-36139
CT/AG#: CV-94-05238-RJB

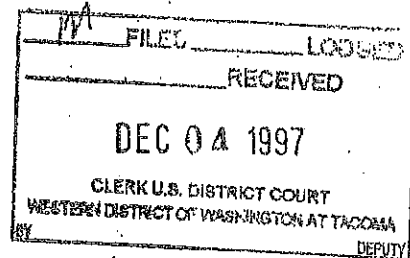
CLYDE RAYMOND SPENCER

Petitioner - Appellant

v.

JOSEPH KLAUSER; CHRISTINE O. GREGOIRE

Respondents - Appellees



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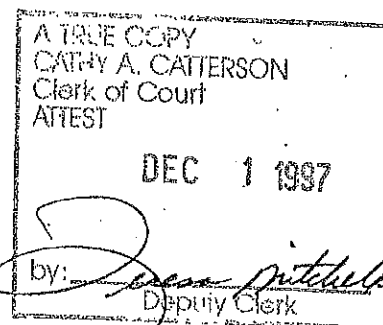
APPEAL FROM the United States District Court for the
Western District of Washington (Tacoma) .

THIS CAUSE came on to be heard on the Transcript of the
Record from the United States District Court for the
Western District of Washington (Tacoma)
and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and
adjudged by this Court, that the judgment of the said
District Court in this cause be, and hereby is AFFIRMED.

Filed and entered October 30, 1997

CERTIFIED TRUE COPY
ATTEST: WILLIAM M. McCOOL
Clerk, U.S. District Court
Western District of Washington
By *Marjorie*
Deputy Clerk



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OCT 30 1997

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLYDE RAY SPENCER,

Plaintiff-Appellant,

v.

JOSEPH KLAUSER, CHRISTINE O.
GREGOIRE,

Defendants-Appellees.

NO. 96-36139

D.C. NO. CV-94-5238-RJB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Argued and Submitted October 6, 1997
Seattle, Washington

BEFORE: WRIGHT, FERGUSON, TROTT, Circuit Judges.

In 1985, Clyde Ray Spencer pled guilty to seven counts of Statutory Rape in the First Degree and four counts of Complicity to Statutory Rape in the First Degree. Spencer received two consecutive sentences of life imprisonment and nine concurrent 171-month sentences. In 1994, Spencer filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, which was denied. He then appealed and another panel reversed in part and

* This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except as provided by 9th Cir. R. 36-3.

remanded for an evidentiary hearing to determine: 1) whether the prosecution had withheld material evidence, and 2) whether Spencer had been competent to plead guilty. On remand, the district court held that no material evidence had been withheld and that Spencer had been competent to plead guilty. Spencer now appeals from the district court on these two issues. We affirm.

We review a district court's decision to grant or deny a § 2254 habeas petition de novo. Martinez-Villareal v. Lewis, 80 F.3d 1301, 1305 (9th Cir. 1996); Calderon v. Prunty, 59 F.3d 1005, 1008 (9th Cir. 1995); Riley v. Deeds, 56 F.3d 1117, 1119 (9th Cir. 1995).

Spencer has failed to show that the evidence withheld at his trial was material to his defense. There is no reasonable probability that production of the medical reports of these two victims would have caused Spencer to choose to go to trial rather than to plead guilty. See Brady v. Maryland, 373 U.S. 83, 87 (1963); Sanchez v. United States, 50 F.3d 1448, 1454 (9th Cir. 1995).

In Sanchez, we stated: "[t]he test for whether the defendant would have chosen to go to trial is an objective one that centers on 'the likely persuasiveness of the withheld information.'" Sanchez, 50 F.3d at 1454 (quoting Miller v. Angliker, 848 F.2d 1312, 1322 (2nd Cir. 1988)). Expert testimony regarding the flaws and limited exculpatory value of the medical reports demonstrated that the withheld information would not have been persuasive at trial. Spencer's subjective claim that he would have gone to trial had he been apprised of the medical reports fails to establish materiality under Sanchez.

Spencer has established that at the time of his guilty plea he suffered from severe depression and was taking a variety of prescription medications, each of which can have negative side-effects. However, Spencer has not presented substantial evidence of his incompetence. United States v. Lewis, 991 F.2d 524 (9th Cir. 1993). For the reasons stated above, WE AFFIRM.

